

2022

Letting Anarchy Loose on the World: *The Anarchist Cookbook* and How Copyright Fails the Author

Debra Halbert

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Recommended Citation

Halbert, Debra (2022) "Letting Anarchy Loose on the World: *The Anarchist Cookbook* and How Copyright Fails the Author," *Akron Law Review*: Vol. 55: Iss. 2, Article 1.

Available at: <https://ideaexchange.uakron.edu/akronlawreview/vol55/iss2/1>

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LETTING ANARCHY LOOSE ON THE WORLD: *THE ANARCHIST COOKBOOK* AND HOW COPYRIGHT FAILS THE AUTHOR

Debora Halbert^{*}

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I. INTRODUCTION

William Powell, like many young Americans coming of age in the 1970s, was radicalized by the Vietnam War and his impending draft date.¹ As a teenager in New York City, Powell lived through the intense period of cultural change made possible by the myriad emerging social movements, including the anti-war movement.² He attended protests and

^{*}I would like to thank Nick Mirkay and Cory Lenz from the Richardson School of Law for their help with this article, as well as the archivists at the Lyle Stuart archives held at Columbia University. I would also like to thank Yvette Liebesman, Sandra Aistars, Mike Madison, Aaron Perzanowski, Dennis Crouch, Lateef Mitma, Camilla Hrdy and the other participants in the Akron IP Scholars Forum for their comments.

1. WILLIAM POWELL, *THE COOKBOOK: COMING OF AGE IN TURBULENT TIMES* 71-99 (2019) (discussing the late 60s and the impact of the Vietnam War and the draft).

2. *See generally id.*

brainstormed with his roommate what they thought of as “recipes for revolution.”³

He decided to write *The Anarchist Cookbook* while on the bus ride home from the 1969 Washington Peace Moratorium March in part because President Nixon had made it clear that the massive social protest gripping the nation would have no impact on his decision to continue the war on Vietnam.⁴ Powell took a leave of absence from his job at a bookstore and wrote eight to ten hours a day for three months.⁵ Powell surfaced from writing with a manuscript he sent to almost forty publishers, but only one responded—Lyle Stuart.⁶ Publishing his book became a life-changing event for Powell, who was transported from being an unknown 19-year-old into the author of perhaps one of the most controversial books of the modern era.⁷

The Anarchist Cookbook remains one of the most controversial books in print, even 50 years after its first publication.⁸ As one commentator states, it is the “literary equivalent of a folk devil: a textual deviant, a threat to society, and the stuff of urban legends.”⁹ There are many ways the book has influenced and shaped American culture and politics over the years: it has found a home among portions of the American population enthralled by violence; it has challenged the American commitment to First Amendment principles; and it has highlighted the U.S. government’s interest in surveilling a person’s reading habits.¹⁰ The book has been associated with high-profile criminal acts like the Columbine massacre as well as many less well known terroristic acts of violence.¹¹ In 2019, *The Anarchist Cookbook* was cited as a manual used by bomb builders charged with conspiracy to make and use a weapon of mass destruction.¹²

3. *Id.* at 103.

4. *Id.* at 170.

5. *Id.* at 172.

6. *Id.* at 178.

7. ANN LARABEE, *THE WRONG HANDS: POPULAR WEAPONS MANUALS AND THEIR HISTORIC CHALLENGES TO A DEMOCRATIC SOCIETY* 64 (2015).

8. *Id.* at 64.

9. *Id.* at 64.

10. Jeff Breinholt, *Books as Contraband: The Strange Case of “The Anarchist Cookbook,”* WAR ON THE ROCKS (Sept. 13, 2018) (describing how the book becomes evidence in criminal trials and discussing the First Amendment issues surrounding its publication) <https://warontherocks.com/2018/09/books-as-contraband-the-strange-case-of-the-anarchist-cookbook/> [<https://perma.cc/2QKV-CQ52>].

11. Loris L. Bakken, *Providing the Recipe for Destruction: Protected or Unprotected Speech?*, 32 MCGEORGE L. REV. 289, 293–94 (2000).

12. *United States v. Velentzas*, No. 15-CR-213 (SJ), 2019 WL 3252961 *1 (E.D.N.Y. July 16, 2019).

Given its popularity amongst violent persons, *The Anarchist Cookbook* has played a role in many criminal trials where judges have debated if the inclusion of portions, or the entirety of the book, is unfairly prejudicial.¹³ The book's mere existence has sparked debates about possible carve-outs to the First Amendment for "criminal cookbooks."¹⁴ As Kennan Ferguson notes, the book "as a source for anarchist theory . . . is a debacle; it is equally problematic for those who would literally follow its recipes."¹⁵ Yet despite such critiques of its substance by anarchists who deride the lack of actual anarchist thought grounding the calls to violence, law enforcement has taken the book seriously.¹⁶

Sometime in the year 2000, Powell, wrote on the Amazon page for the Barricade Books edition that he had matured from the 19-year-old who authored the book into a man who disavowed the violence the book advocated.¹⁷ He said, however, he was helpless to halt its ongoing publication because he didn't own the copyright.¹⁸ Powell saw copyright as leaving him powerless to control the impact of his creation.¹⁹ While ostensibly designed to protect authors, Powell's disavowal of his book paints a different picture of how copyright works—one where copyright, once assigned, isn't about authors at all but is another way an author loses control of their work.

This article is not about the criminal history of *The Anarchist Cookbook*, nor is it about the morality of the words we write, though it is a lesson in how something can take on a life of its own and become more

13. See *United States v. Searcy*, 173 F.3d 430 (6th Cir.1999) (Admitting TAC as evidence of conspiracy to distribute marijuana. While the evidence was deemed likely prejudicial because there was no reason to include it other than to inflame the jury, the court upheld the conviction because other evidence existed. see also *Mertz v. Williams*, 771 F.3d 1035 (7th Cir. 2014) (Admission of defendant's books, including TAC was appropriate to demonstrate state of mind); *United States v. Rogers*, ARMY 20131074, 2015 WL 9595630 (Army Ct. Crim. App. Dec. 18, 2015) (The TAC was listed as evidence of criminal intent and/or bad intentions. Rodgers was ideologically confused given that when his barrack room was searched it unearthed not only TAC but also *Mein Kampf* and *The Communist Manifesto*); *United States v. Honken*, 378 F. Supp. 2d 970 (N.D. Iowa 2004) (rejecting the idea that possession of books is intrinsic evidence but still may be marginally probative).

14. Chelsea Norell, *Criminal Cookbooks: Proposing a New Categorical Exclusion for the First Amendment*, 84 S. CAL. L. REV. 933, 944-45 (2011).

15. KENNAN FERGUSON, *COOKBOOK POLITICS* 31 (2020).

16. See CRIMETHINC. WORKER'S COLLECTIVE, *RECIPES FOR DISASTER: AN ANARCHIST COOKBOOK* (2012); see also KEITH MCHENRY, CHAZ BUFE & HEDGES CHRIS, *THE ANARCHIST COOKBOOK* (2015). Both books appropriating the title of *The Anarchist Cookbook* are rebukes to the original and its lack of theoretical commitment to the principles of anarchism.

17. William Powell, Editorial Review of *The Anarchist Cookbook*, AMAZON, <https://www.amazon.com/Anarchist-Cookbook-William-Powell/dp/0962303208> [<https://perma.cc/L2VR-FTEV>].

18. *Id.*

19. *Id.*

than the sum of its parts. *The Anarchist Cookbook* teaches more than how to commit acts of violence against the state or your fellow humans. It also teaches about the politics of authorship, ownership, publication, copyright assignments, the public domain, and the legacies our printed words leave behind. There are lessons here about the importance of how a power imbalance between an author and publisher can lead to bad contracts and loss of authorial control. There are also considerations about socially dangerous works and how they are—or are not—regulated. While all these broader considerations are important, this article primarily focuses on the story of copyright and what it can and can't do for the author of an original work.

Despite his requests, removing the book from print did not happen during Powell's life; he died in 2017 from a heart attack at the age of 66, having disavowed his first and most popular publication.²⁰ Thus, this article seeks to answer what rights, if any, do Powell's heirs have regarding the copyright in *The Anarchist Cookbook* should they seek to pursue his wishes to remove it from the market. While the law may provide a way to achieve this goal, there are two remaining questions: When a work has entered the zeitgeist of a nation, is it possible to remove it from circulation, and would it even make sense to try?

II. *THE COOKBOOK* AND ITS AUTHOR

A. *The Origin of The Cookbook*

In his memoir, Powell attributes inspiration for *The Anarchist Cookbook* to his roommate, who had mentioned the idea of “recipes for revolution.”²¹ According to one report citing (presumably) the same roommate:

[T]he idea was conceived as a series of “recipes” in the form of posters that would be pasted up all over Manhattan. The first recipe would be a advice on how to throw a Molotov cocktail, the second would be how to make LSD and so on. This idea was never acted on.²²

While Powell did not pursue the original idea, the general scope of recipes became the foundation for his book as indicated in the title of his seminal work. His sources were “hodge-podge” by his description, but all public

20. Steve Marble, *William Powell, Author of Counterculture Manifesto “The Anarchist Cookbook,” dies at 66*, L.A. TIMES (Mar. 30, 2017, 3:00 PM) <https://www.latimes.com/local/obituaries/la-me-william-powell-20170330-story.html> [<https://perma.cc/3AXD-SZHL>].

21. POWELL, *supra* note 1, at 103.

22. Tony Thompson, *Ban My Bombers’ Guide, Says Author*, OBSERVER, June 11, 2000, at 6.

documents.²³ The most incendiary—literally and figuratively—materials were the instructions for making bombs and weapons from U.S. Army and Marine Corps publications available at the New York Public Library.²⁴ As he noted in his memoir, “what many of the critics found appalling when printed in *The Cookbook* had in fact been standard operating procedure in the U.S. military and Special Forces manuals for decades. Apparently, the context made all the difference.”²⁵

Lyle Stuart, who already had a reputation for publishing controversial material, was willing to publish the book.²⁶ Stuart gave Powell a \$2,000 advance (in 2021 dollars, about \$13,420)²⁷ and published *The Anarchist Cookbook* in 1971.²⁸ Stuart noted in a 1978 interview that he published the book “against the wishes of everyone in my office.”²⁹ Several decades later, Stuart commented, “I’ve done a lot of controversial things but nothing so much as this book.”³⁰

Stuart was, according to Powell, excellent at marketing, and at one of the first press conferences announcing the book, a smoke bomb was let off that Powell believed had been planted by Stuart to create attention.³¹ While the smoke bomb may have been a stunt, there is no denying the book’s impact—generating criticism from otherwise ideologically opposed sides of the political spectrum.³² It is no surprise that the publication also led to creating an FBI file on Powell (Stuart already had

23. POWELL, *supra* note 1, at 174.

24. *Id.* at 175.

25. *Id.* at 175.

26. LARABEE, *supra* note 7, at 66 (describing Stuart’s 1960s encounters with the U.S. government over publication of Fidel Castro’s *History Will Absolve Me*, among other titles); *see also* Thompson, *supra* note 22 (“Stuart was short and stout and impossible to intimidate. A reporter from *Life* once described him as “a gleefully Satanic Santa Claus.” Stuart started out as a journalist, making a name for himself after getting into a mudslinging contest with columnist Walter Winchell. A court eventually ordered Winchell to pay \$8,000 to Stuart for libel, which he used to start a publishing house; he later put out the English-language version of Fidel Castro’s *History Will Absolve Me*. For these and other transgressions, he landed on the FBI’s “Security Index” list, which FBI director Hoover envisioned would be used to jail “potentially dangerous” individuals in the case of a national emergency.)

27. POWELL, *supra* note 1, at 175.

28. *See* WILLIAM POWELL, *THE ANARCHIST COOKBOOK* (1971).

29. Joseph McLellan, *Conveyor of the Controversial Publisher Lyle Stuart’s Business Is the Books Others Won’t Touch*, WASH. POST (Sept. 6, 1978), <https://www.washingtonpost.com/archive/lifestyle/1978/09/06/conveyor-of-the-controversial-publisher-lyle-stuarts-business-is-the-books-others-wont-touch/9372c0bc-8929-42e5-99de-0d102946a4a1/> [<https://perma.cc/9572-U89L>].

30. Sarah Lyall, *A Blast from the Past*, N.Y. TIMES, Oct. 27, 1993, at 18.

31. POWELL, *supra* note 1, at 206; LARABEE, *supra* note 7, at 66.

32. LARABEE, *supra* note 7, at 79 (noting that conservative commentators and liberal commentators decried the book and anarchists rejected it as well).

and FBI file because of his controversial publishing practices).³³ The file was made public by the FBI under a freedom of information act request and is a collection of newspaper articles, letters to the FBI encouraging the book to be removed, background checks, investigations on Powell, and even a copy of his college ID card.³⁴ Despite being labeled an extremist by the U.S. government, his ex-flatmate said that Powell was never an anarchist.³⁵

As Powell tells the story, the day he returned from signing a contract for *The Anarchist Cookbook* in Stuart's office, he also received his induction order into the U.S. military.³⁶ Thus, the ink was not yet dry on the contract for the book that would ultimately change Powell's life when he became otherwise occupied. He initially looked for a way to get rejected from military service, then he got married. Finally, as *The Anarchist Cookbook* made its debut, Powell headed to Windham College in Vermont, where he started his freshman year.³⁷

In 1972, Powell's second year in college, Stuart notified him that Panther Press (later Paladin Press) was suing them over Powell's references to *150 Questions for a Guerrilla*.³⁸ Panther Press was owned by Peder Lund and Robert Brown, Vietnam veterans and former members of the U.S. special forces, who had founded Panther Press to publish books on military subjects.³⁹ Like Stuart, they felt the First Amendment "guaranteed Americans the right to read about whatever subjects they desired."⁴⁰ The trial took place in Denver, Colorado, and while the opinion is unpublished, a 1975 newspaper article reported that U.S. District Court Judge Richard P. Matsch found for the defendants.⁴¹ According to the news reporting, Judge Matsch held that the "practically similar" drawings for making anti-personnel grenades were not copyrightable and that other

33. Lyle Stuart Papers, Columbia University Archives. https://findingaids.library.columbia.edu/ead/nnc-rb/ldpd_8623590/dsc (noting that the FBI had a file on Stuart).

34. See FBI, U.S. DEP'T OF JUST., WILLIAM R. POWELL PART 01 OF 01, FILE 9-8160 <https://vault.fbi.gov/william-powell/william-powell-part-01-of-01> [<https://perma.cc/75TX-2M4C>].

35. Thompson, *supra* note 22.

36. POWELL, *supra* note 1, at 184.

37. *Id.* at 197.

38. *Id.* at 214–15.

39. *Happy 45th Paladin Press*, SOLDIER SYS. DAILY (Aug. 21, 2015), <https://soldiersystems.net/tag/paladin-press/> [<https://perma.cc/YCT6-VDNC>].

40. *Id.* (Ironically, even as *The Anarchist Cookbook* was making national headlines as a source of dangerous materials, Lund and Brown were publishing, and continued to publish for decades later, materials on all topics related to explosives, firearms, martial arts, and more. Lund and Brown split in 1975 with Brown going on to establish *Soldier of Fortune* magazine. Lund continued to publish, changing the name Panther Press to Paladin Press so as not to be confused with the Black Panthers.)

41. *Judge Rules "Anarchist Cookbook" creators didn't violate copyright*, GREELEY DAILY TRIB., December 18, 1975, at 13.

information the plaintiffs claimed came from *150 Questions for a Guerilla* could be obtained “in the public domain.”⁴² The judge ordered Lund to pay the court costs for both sides.⁴³ In his memoir, Powell noted that his royalties from *The Anarchist Cookbook* paid for the trial, defense, and afterparty.⁴⁴

While there are no specific dates mentioned in the memoir, sometime around 1975, Powell wrote that the royalties for *The Anarchist Cookbook* had dwindled and he needed work, believing the book to have been a “flash in the pan” and would retreat to obscurity like most books do.⁴⁵ In 1977, Stuart sent Powell a contract for Powell’s second book, a fictionalized account of the start of World War I entitled *The First Casualty*.⁴⁶ According to Powell’s memoir, their next communication was in the mid-80s when Stuart wrote Powell to tell him that Stuart had sold Lyle Stuart Inc., and the new publisher was not going to continue publishing *The Cookbook*.⁴⁷ It would seem the story should end here. However, while Powell was busy living his life and building a career in international education, *The Anarchist Cookbook* took on a life of its own.

B. Disavowing The Cookbook

While most books fade into obscurity, *The Anarchist Cookbook* is not one of them. The Internet only compounded its fame, giving life to digital versions of the book and numerous alternative texts also titled *The Anarchist Cookbook*. His memoir makes clear, as does Tony Dokoupil’s piece in *Newsweek*, that Powell’s life did not freeze in time with the publication of *The Anarchist Cookbook*. As Powell himself put it:

“During the years that followed its publication I went to university, married, became a father and a teacher of adolescents. These developments had a profound moral and spiritual effect on me. I no longer agreed with what I had written, and was becoming increasingly uncomfortable with the ideas I had put my name to.”⁴⁸

42. *Id.*

43. *Id.*

44. POWELL, *supra* note 1, at 216. At the time of this writing, the transcript for this case has not been acquired.

45. *Id.* at 253; Tony Dokoupil, *Sorry About All the Bombs*, NEWSWEEK (Feb. 20, 2011, 12:00 AM), <https://www.newsweek.com/sorry-about-all-bombs-68549> [<https://perma.cc/PFF2-CV5H>] (confirming Powell’s recollection that royalties began to dry up in 1975 and he assumed the book would go out of print).

46. POWELL, *supra* note 1,

47. POWELL, *supra* note 1, at 277, 300.

48. Thompson, *supra* note 22.

By the beginning of the 21st century, Powell's life was nothing like that of the radicalized young man who had penned the book. However, as the author of one of the most infamous books in modern America, which has also been linked to numerous acts of violence worldwide, he has had difficulty escaping his legacy.⁴⁹

In June 2000, Powell sent a letter to an Anarchist Cookbook Fan Club seeking to explain to those drawn to the book that he felt only remorse for its publication,

The book was a misguided product of my adolescent anger at the prospect of being drafted and sent to Vietnam to fight in a war that I did not believe in. The central idea was that violence is an acceptable means to bring about political change. I no longer agree with this.⁵⁰

Powell also disavowed the book on its Amazon page in 2000, and much like the letter above, Powell stated that “The central idea to the book was that violence is an acceptable means to bring about political change. I no longer agree with this.”⁵¹

Powell writes in his memoir that he began to have doubts about the book not long after its publication.⁵² In an interview with Gabriel Thompson for *Harper's*, Powell said that “There wasn't a seminal moment, like Paul on the road to Damascus, when a blinding light came down. But the publicity surrounding the book spurred me to try and think it through again, to try and justify it. And I came up short.”⁵³ The public pronouncements served a practical, personal reason as well. Anonymous emails had been sent to Powell's employer disclosing him as the author of *The Anarchist Cookbook*, and as he sought future employment, he was often ignored because his authorship of the book was used to imply that he was not suitable to work in education, his chosen profession.⁵⁴ To get ahead of the controversy, Powell began disclosing his authorship of *The Anarchist Cookbook* upfront and he also publicly disavowed the book.⁵⁵ In 2013, Powell again publicly denounced the book in a letter to *The Guardian*, where he sought to contextualize his current life and made the

49. Dokoupil, *supra* note 45.

50. Thompson, *supra* note 22.

51. Powell, *supra* note 1.

52. *Id.*, at 205.

53. Thompson, *supra* note 22.

54. POWELL, *supra* note 1, at 316.

55. Dokoupil *supra* note 45. (noting that “Police have linked it to the Croatian radicals who bombed Grand Central Terminal and hijacked a TWA flight in 1976; the Puerto Rican separatists who bombed FBI headquarters in 1981; Thomas Spinks, who led a group that bombed at least 10 American abortion clinics in the mid-1980s; and the 2005 London public-transport bombers”).

call for the book to “quickly and quietly go out of print.”⁵⁶ That denunciation came in the wake of yet another American high school shooting where the gunman was found to have pages from the book.⁵⁷

Powell died unexpectedly at the age of 66, but *The Anarchist Cookbook* lives on in print and copyright.⁵⁸ A 2017 posthumous documentary demonstrated Powell’s discomfort with his book’s legacy.⁵⁹ Gabriel Thompson, who had interviewed Powell, reported that Powell had published the book as a young man and then “spent the next four decades fighting to take it out of print.”⁶⁰ Powell was consistent in his request to withdraw the book from publication but noted he had no control over its publication because he did not own the copyright.⁶¹ Thus, this narrative now turns to the copyright and the world of publication.

III. *THE COOKBOOK* AND ITS COPYRIGHT

In his Amazon review, Powell seeks to clarify for future readers that he would very much like to see the book removed from print and that he no longer endorses the views expressed in the book. He notes that,

Contrary to what is the normal custom, the copyright for the book was taken out in the name of the publisher rather than the author. I did not appreciate the significance of this at the time and would only come to understand it some years later when I requested that the book be taken out of print. . . . In 1976 I became a confirmed Anglican Christian and shortly thereafter I wrote to Lyle Stuart Inc. explaining that I no longer held the views that were expressed in the book and requested that *The Anarchist Cookbook* be taken out of print. The response from the publisher was that the copyright was in his name and therefore such a decision was his to make - not the author’s. In the early 1980’s, the rights for the book were sold to a nother publisher. I have had no contact with

56. William Powell, *I Wrote the Anarchist Cookbook in 1969. Now I See Its Premise as Flawed*, GUARDIAN (Dec. 19, 2013, 10:40 AM), <https://www.theguardian.com/commentisfree/2013/dec/19/anarchist-cookbook-author-william-powell-out-of-print>. [https://perma.cc/MH7R-93UU].

57. Danuta Kean, *Anarchist Cookbook Author William Powell Dies Aged 66*, GUARDIAN (Mar. 20, 2017), <http://www.theguardian.com/books/2017/mar/30/anarchist-cookbook-author-william-powell-dies-aged-66> [https://perma.cc/SZ2X-Z423] (“Though publication was suppressed in some countries, the book is available online and has been associated with a number of terrorist attacks and school shootings, the last being in 2013 when shooter Karl Pierson killed a classmate and then himself in a high school in Denver, Colorado.”).

58. *Id.*

59. Charlie Siskel, Matthew Perniciaro & Michael Sherman, *American Anarchist*, YOUTUBE (2017), <https://www.youtube.com/watch?v=mLsBIQxMWFc> [https://perma.cc/SXE9-HFSN].

60. Thompson, *supra* note 22.

61. Thompson, *supra* note 22; Powell, *supra* note 17.

that publisher (other than to request that the book be taken out of print) and I receive no royalties.⁶²

From the available public documents and other reporting, Powell's statement seems generally accurate, even though some of the dates he uses do not match other available documents that can demonstrate copyright ownership.

This section takes up the copyright trail and follows the book's publication and the transfer of rights. The available public resources offer often-conflicting accounts on the dates of sales and transfers, though these differences seem to be a product of bad memory rather than intentional misinformation. This section attempts to clarify the transfer of copyright from Lyle Stuart Inc. to its current rights holder in as much detail and clarity as possible. However, without a copy of the original contract, some of Powell's claims about *The Anarchist Cookbook's* copyright are difficult to confirm.⁶³ For example, Powell indicates in his memoir that he had a meeting with Stuart where he was offered a contract, but no contract details are provided.⁶⁴ A request from the Lyle Stuart archive at Columbia University did not uncover a copy of the original contract.

This extensive description of the copyright transfers and who owns rights to the book is important for several reasons. First, to illuminate how complicated it is to know who actually owns the copyright for a work in a world where publishers sell their businesses, go bankrupt, are consolidated, and acquire different layers of rights in a book. Questions remain about what exact rights Stuart initially had, what rights were sold, and who at this point earns royalties for the book.⁶⁵ Second, even though copyright secures the rights against unauthorized reproductions, numerous alternative editions exist that may or may not be exact duplicates of the original. The Amazon reviews indicate that some versions have been heavily edited, and others are simply not the original *Cookbook* at all. Third, as the next section will detail, knowing who owns the copyright and how they came into its possession helps in any potential litigation surrounding author's rights.

62. Powell *supra* note 17.

63. I have been in contact with the Lyle Stuart archive librarians at Columbia University who have done a search of the archive and could not find a copy of the original contract. With Powell and Stuart both deceased, the primary actors are no longer able to discuss the details.

64. POWELL, *supra* note 1 at 184. In the next section I will provide some speculation about what might have been in the contract.

65. A trip to the US Copyright Office for archival work to acquire copies of the filed documents is outside the scope of this paper but will ultimately be required to finalize the trail.

A search of the United States Copyright archive produced the following images. Figure 1 is the original card catalog card listing the author as William Powell and the copyright to Lyle Stuart, Inc. Figure 2 is the registration for the 1971 text also listing Lyle Stuart Inc. as the copyright owner but cross-referencing it with the original author, William Powell. Figure 3 does the reverse, listing William Powell as the author but with the copyright affixed next to Lyle Stuart Inc.

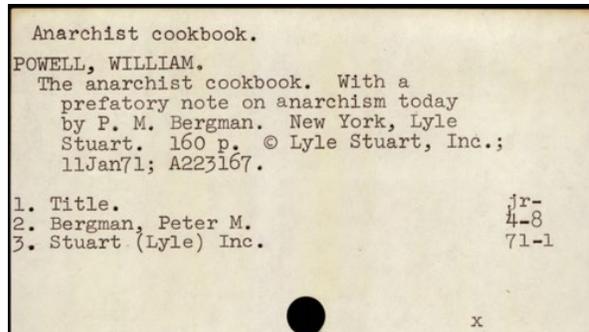


Figure 1: Card Catalog

BOOKS	Jan-June	1971
drafts by Engels and other supplementary material. Edited & annotated. With an introd., by Dirk J. Struik. 1st ed. New York, International Publishers. 224 p. NM: introd., additions, compilation & editing. © International Publishers Co., Inc.; 17May71; A240981.	STRYKER, RUTH PERIN. Back to nursing; a guide to current practice for active and inactive nurses. 2d ed. Philadelphia, W. B. Saunders Co.; 18Apr71; A229167.	STUDENT ADVISORY COMMITTEE ON INTERNATIONAL AFFAIRS. Thailand: our troubled ally in South-east Asia. See ZWENIG, FRANCIS A.
STRUPCZEWSKI, ANTHONY. Conn trombone slide chart. See FAULISE, PAUL.	STRZELECKI, ZENOBIOUS. Kierunki scenografii w polsce oraz Warszawa, Panstwowe Wydawn. Naukowe. 307 p. NM: text, drawings & 151 photos. © Panstwowe Wydawn. Naukowe; 18Dec70; APO-24741.	STUDENT AID ANNUAL, 1969-1970. Moravia, N.Y., Chronicle Guidance Publications. 364 p. © Chronicle Guidance Publications, Inc.; 4Dec69; A226332.
STRUPP, HANS H. Psychotherapy and the modification of abnormal behavior: an introduction to theory and research. New York, McGraw-Hill. 229 p. (McGraw-Hill paperback series in psychopathology) © McGraw-Hill, Inc.; 4Jan71; A231616.	STUART, GRAHAM. Oral history interview with Graham Stuart. See HENLE, RAYMOND.	STUDENT AID ANNUAL, 1970-1971. Moravia, N.Y., Chronicle Guidance Publications, Inc.; 12Nov70; A210470.
STRUPPE, H. G. See STRUPPE, HANS GEORG.	STUART, JANE. See JUERGENSMEYER, JANE STUART.	STUDENT GUILD. Individual student enrollment form for Student Guild world-wide benefits. Sheet. © Student Guild; 1Mar71; A219509.
STRUPPE, HANS GEORG. Handbuch der Gas-Chromatographie. See LEIBNITZ, EBERHARD.	STUART, JESSE HILTON. 2nd summer. See MURRAY STATE UNIVERSITY, MURRAY, KY.	STUDER, A. See HANDEBUCH DER ALLOEMEINEN PATHOLOGIE.
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POWELL, DANIEL. Education & the new teacher. See CHARLES, B. J.	POWELL, B. W. See THERMAL CONDUCTIVITY.	POWELSON, MARY F. Compound word games. 2 l. & 4 cards. © Mary F. Powelson; 8Dec70; A23136.
POWELL, E. P. Shaving pleasure. Folder. © E. P. Powell; 15Feb71; A221280.	POWELL, ROBERT. The case for extinction. See CURTIS, RICHARD.	POWER, LAURENCE. The low-upkeep book of lawns and landscape. See MCDONALD, ELVIN.
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POWELL, ENOCH. Britain's most controversial M.P. See BUCKLEY, WILLIAM F., JR. Firing line. No. 222.	POWELL, TALMAGE. The cage. New York, Avon Books. 127 p. (An Avon original, 01345) © Talmage Powell; 20Jan69; A224194.	POWER TECHNOLOGIES, INC. Application of traveling wave theory to transient overvoltages on RFI systems; seminar notes. Prepared by D. E. Redman. 1 v. NM compilation & additions. © Power Technologies, Inc.; 8Feb71; A227998.
POWELL, ERIC, ed. County medicines, by Peter Rushola, pseud. Rustington, Eng. Health Science Press. 64 p. (Health master Health in the home series, 8) © Peter Rushola; 4Jan71; APO-65555.	POWELL TELEPHONE CO. Rutledge, Tennessee, including Wash- burn, Powder Springs, and others telephone directory. © Powell Telephone Co. Jan71. © 14Dec70 (in notice: 1971); A214809.	POWER TO SPELL; teacher's guide, 4-5, by Paul R. Hanna, Jean S. Hanna, Richard E. Hodges & David J. Peterson. Textbook-notebook ed. Boston, Houghton Mifflin. 2 v. © Houghton Mifflin Co.; 20Jan71; A216795-A216797.
POWELL, ERIC F. W. Health from earth, air and water. Rustington, Eng. Health Science Press. 64 p. (Health master Health in the home series, v. 4) © Eric F. W. Powell; 12Nov70; APO-65511.	POWELL THOMAS. Director of key government personnel. See HILL & KNOWLTON, INC.	POWERS, ART. See AN EYE FOR AN EYE.
POWELL-FROISSARD, LILY. Jumping: learning and teaching. See FROISSARD, JEAN.	POWELL, THOMAS CONLEY. Fusion power for interstellar flight. Ann Arbor, University Microfilms Library Services (4158) Microfilm. (Doctoral dissertation series) © Thomas Conley Powell; 28Feb71; A232626.	POWERS, BARBARA FROYN. Self and community. See FRANZ, JEANNE WALSH.
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POWELL, JOHN. The glass works of John Powell. See CHAPMAN, MARY HELEN.	POWELL (WILLIAM) CO. Quality control manual for nuclear power valves A.S.M.E. code requirements. 1 v. © William Powell Co.; 10Mar71; A231451.	POWERS, DELMA. See CAT SEES MOOSE. COME, HELD, SIT, SKATE. MOUSE PLANS A TRICK.
POWELL, JOHN HOSMAN. Political mobilization of the Venezuelan peasant. Cambridge, Mass., Harvard University Press. 259 p. © President & Fellows of Harvard College; 18Jan71; A217512.	POWELL, WILLIAM DAVID. The English writings of Flann O'Brien. Ann Arbor, University Microfilms Library Services (2998) Microfilm. (Doctoral dissertation series) © William David Powell; 29Jan71; A227581.	POWERS, FRANCIS GARY. J'états pilote espion. Avec la col- laboration de Curt Gentry. Traduit de l'américain par Claude Yelnick. [Paris] Calmann-Lévy. Original title: Operation overflight. NM: translation. © Calmann-Lévy; 30Mar71; APO-65718.
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		POWERS, HOWARD JOSEPH. Waterloo two. See MANGUS, ALFRED RING.
		POWERS, MARION EDMOND. The legal citation directory. West Mantoloking, N.J., Francis Press. 302 p. © Marion D. Powers; 25Mar71; A230719.
		POWERS, NICHOLAS D., JR. Barefoot in Booger Hollow; yesterday's sagin' to liv by today. Compiled & illustrated by Nick & Wilam Powers. New York, by a new edition

Figure 3: William Powell as Author

Copyright is listed as belonging to the publisher in Figures 2 and 3. However, that is true for the entries across the page, not just for Powell's work. Without the original contract, it is difficult to know what rights it assigned, but the contract likely assigned the exclusive rights to publication to Lyle Stuart, Inc.⁶⁶

Stuart sold his publishing company and extensive backlist to Carol Publishing with the transfer of business in January 1989, for \$12

66. The specifics of these rights under the copyright law existing at the time will be discussed in more detail in the next section. For a detailed discussion about the rights as they existed when the book was published see Section IV [x], *infra*.

million.⁶⁷ The deal required Stuart to sign a three-year noncompete agreement with Carol Publishing.⁶⁸ However, Steve Schragis, owner of Carol Publishing, did not wish to publish *The Anarchist Cookbook* because, as one reporter noted, he thought it served “no positive purpose.”⁶⁹ On February 17, 1989, Powell signed over his royalty rights for *The Anarchist Cookbook* to Stuart.⁷⁰ The full description of the agreement reads:

Because Lyle Stuart Inc., has indicated that it will no longer publish The Anarchist Cookbook and will sell or assign its publication rights elsewhere,

1. Lyle Stuart wishes to buy and William Powell wishes to sell the author’s right to future royalties in The Anarchist Cookbook.
2. Powell assigns all royalties and future earnings on the book to Lyle Stuart in perpetuity, such assignment to begin on January 1, 1989 and shall not include or infringe upon any monies due Powell thru December 31, 1988.
3. Within ten days after receiving a countersigned copy of the Agreement, Lyle Stuart shall forward his personal check for ten thousand dollars (\$10,000) to William Powell as payment in full for these rights.⁷¹

A signed copy of the agreement and a letter from Powell dated February 28, 1989, accompanied the contract.⁷² Thus, on the same day that Stuart signed his company over to Carol Publishing, he also came into complete possession of both the publication and royalty rights for *The Anarchist Cookbook*. It could be that Powell waived his royalty rights to state publicly that he received no royalties from the book.

On April 6, 1989, Schragis signed a transfer of rights to *The Anarchist Cookbook* to Stuart and Arnold Bruce Levey for \$75,000.⁷³ Despite the noncompete agreement, the contract transferring rights to

67. Thompson, *supra* note 22; John Blades, ‘GUTSIEST’ PUBLISHER, CHICAGO TRIBUNE (Dec. 20, 1988 12:00 am), <https://www.chicagotribune.com/news/ct-xpm-1988-12-20-8802260376-story.html> [<https://perma.cc/2226-38V5>].

68. Edwin McDowell, *Book Notes: Two Stuart Titles*, N.Y. TIMES, April 4, 1990, at C21.

69. Thompson, *supra* note 22.

70. Contract between William Powell and Lyle Stuart, Lyle Stuart, Inc. CEO (Feb. 17, 1989) (on file with author) (on file with the Lyle Stuart Archive at Columbia University).

71. *Id.*

72. Letter from William Powell (on file with the author) (on file with the Lyle Stuart Archive at Columbia University).

73. Contract between Lyle Stuart and Steve Schragis (on file with author) (on file with the Lyle Stuart Archive at Columbia University)

Stuart and Levey included a provision allowing Stuart to publish *The Anarchist Cookbook* so long as Stuart didn't publish it under his own name.⁷⁴ This contract acknowledges that Stuart owns the "Author's rights under a separate Agreement with William Powell" and as a result is responsible for all royalties, removing Levey from any responsibility.⁷⁵

With the rights to *The Anarchist Cookbook* secured, Stuart officially submitted the transfer of copyright with the United States Copyright Office.⁷⁶ Stuart and Levey signed an additional contract on July 10, 1989, establishing their partnership to print *The Anarchist Cookbook*, detailing the split of payments to Schragis, and specifically stating that "the partnership shall honor its royalty obligations to Stuart as author."⁷⁷ Claiming Stuart as author appears to be grounded upon Powell's transfer of royalty rights to Stuart even though a transfer of royalty rights is not the same thing as a transfer of authorship.⁷⁸ This agreement also provided that, upon the death of either partner, "the survivor shall have the right to purchase the interest of the deceased [sic] at fair market value based on an appraisal by an objective source."⁷⁹

Stuart then founded Barricade Books with his wife Carol and trial lawyer Alan G. Schwartz.⁸⁰ Thus, the language in the agreement with Powell is technically true: Lyle Stuart, Inc. would no longer publish *The Anarchist Cookbook*, but the rights to publish the book were never long out of Stuart's control. According to *The New York Times*, the just started Barricade Books sold its first 10,000 copies of *The Anarchist Cookbook* and had ordered another 10,000 within the first year.⁸¹ Not long after rights to publish *The Anarchist Cookbook* moved to Barricade Books, *The Anarchist Cookbook* sold its two-millionth copy, at which time Stuart was quoted as saying that "William Powell, who wrote 'The Anarchist

74. Contract between Lyle Stuart and Steve Schragis (on file with author) (on file with the Lyle Stuart Archive at Columbia University) (The relevant provision reads: "It is understood that although Lyle Stuart has signed a non-compete agreement with CCC, that agreement is waived solely for the publication and merchandising of this Work. It is understood, however, that Stuart's name will not be used (as per #3) in any public forum with regard to his role as co-publisher.").

75. *Id.*

76. U.S. COPYRIGHT OFFICE, V2496P417-420 (July 3, 1989).

77. Updated Agreement between Lyle Stuart and Arnold Bruce Levey (on file with author) (on file with the Lyle Stuart Archive at Columbia University).

78. *Id.* (using the language of authorship in the agreement).

79. *Id.*

80. Jim Milliot, *Barricade Books Sold*, PUBLISHERS WEEKLY (2018), <https://www.publishersweekly.com/pw/by-topic/industry-news/industry-deals/article/77799-barricade-books-sold.html> (last visited Jul 5, 2021); Lyle Stuart Returns to Book Publishing, PUBLISHERS WEEKLY, February 22, 1991, at 111 (copy on file with author) (Schwartz at the time besides being an attorney was the literary agent for NYC mayor Edward I. Koch).

81. McDowell, *supra* note 68.

Cookbook’ when he was 21, gave up his royalty rights and now lives quietly somewhere in Asia. He is no longer an anarchist.”⁸²

While the ping-pong of the publishing rights between Stuart and Schragis is confusing, the story gets more complicated; there are not many documents available at this time to explain why the Copyright Office recorded a series of submissions with a November 19, 2013 certification date, but with various dates of execution.⁸³ There are records related to titles held by Carol Publishing that are part of the Copyright Office record and include *The Anarchist Cookbook* but these records do not provide much insight into the transfer of rights.⁸⁴ In 1992, and again in 2001, but filed on November 25, 2013, there are documents recorded with the Copyright Office as “agreements” between Stuart and Levey.⁸⁵ There is no other information available about these documents at this time because the Copyright Office does not provide any additional information besides listing what has been filed via their online catalog.

More relevant to identifying the current owner of rights are three entries recording the sale of rights associated with *The Anarchist Cookbook*. The Copyright Office recorded a sales agreement between Levey and Ozark Press, LLC for *The Anarchist Cookbook* on November 25, 2013, and the Certification was recorded on November 19, 2013.⁸⁶ Levey sold his rights in *The Cookbook* to Ozark Press, but Stuart was still in possession of his rights to the book until June 3, 2006 when Stuart transferred *The Anarchist Cookbook*’s copyright to Billy E. Blann.⁸⁷ This record was certified November 19, 2013, and recorded on November 25,

82. Lyall, *supra* note 30. Related to Barricade Books, in 1998, Barricade Books filed for bankruptcy after Vegas Casino owner Steven Wynn sued Stuart for libel and got a court order freezing Stuart’s inventory. Joyce Walder, *Whenever Trouble Brews, Publisher Beams*, THE NEW YORK TIMES, January 28, 1998, at 2, <https://www.nytimes.com/1998/01/28/nyregion/public-lives-when-ever-trouble-brews-publisher-beams.html> [<https://perma.cc/NUU9-4SYK>]. According to the news reports, the bankruptcy allowed for Stuart to continue publishing. *Id.* (“Mr. Wynn won the libel case against Mr. Stuart’s company, Barricade Books, in August, then got a court order freezing the inventory, putting Mr. Stuart out of business. Mr. Stuart countered by declaring bankruptcy, which, under law, permits him to do business as usual.”)

83. U.S. Copyright Office, V9906 D815 P1-3 (Nov. 25, 2013).

84. On August 20, 1998, Carol Publishing filed a supplemental copyright security agreement with a “List of Titles for Carol Publishing,” including *The Anarchist Cookbook* listing 300 titles for Carol Publishing. A second listing for Carol Publishing on December 23, 1999, includes *The Anarchist Cookbook* among 1,680 titles. An explanation of why these are listed as part of Carol Publishing’s backlist will remain an unsolved question without further archival research at the U.S. Copyright office.

85. U.S. Copyright Office, V9906 D815 P1-3 (Nov. 25, 2013).

86. U.S. Copyright Office, V9906 D810 P1 (Nov. 25, 2013).

87. U.S. Copyright Office, V9906 D531 P1 (Nov. 25, 2013).

2013.⁸⁸ On June 24, 2006, just weeks later, Stuart died; he was 83.⁸⁹ Finally, there is a Copyright Assignment between Blann and Ozark Press effective as of November 19, 2013, recorded on November 25, 2013.⁹⁰ Blann is the owner of Ozark Press, now named Delta Press.⁹¹ According to *The Daily Beast*, “Billy Blann, [is] a kooky old man in El Dorado, Arkansas, who owns the tiny printing house Delta Press—and was once accused by local leaders of running a ‘satanic stronghold.’”⁹²

According to the Copyright Office Circular 12, recording transfers of copyrights such as those between Stuart, Levey, and Blann, is not mandatory, but doing so provides the parties with additional legal priority in the case of disputes as codified in 17 U.S.C. 205.⁹³ It is likely the 2013 filings were completed in preparation for legal action seeing that Blann had indicated he wanted to shut down unauthorized copies of *The Anarchist Cookbook* in a 2015 interview.⁹⁴

While the official copyright trail leads to Blann, there are several others claiming ownership, or at least publishing the book affixing their own publishing company and copyright information. Snowball Publishing, a publishing company in Lancaster, Texas, has a 2013 version of *The Anarchist Cookbook* available via Amazon and the Snowball website.⁹⁵ While Blann told reporters he was aware of the unauthorized copy and seeking to have it removed from publication, the book is still available as of this writing.⁹⁶ There is a Medina University Press

88. *Id.*

89. Lyle Stuart Dead at 83, 253 PUBLISHERS WEEKLY 10 (2006), <https://www.publishersweekly.com/pw/print/20060710/10810-news-briefs.html> [<https://perma.cc/694Q-FBVZ>].

90. U.S. Copyright Office, V9906 D483 P1 (Nov. 25, 2013).

91. Thompson, *supra* note 22. (While the dates in the news reporting do not align with the dates filed in the copyright office, Thompson reported that Stuart sold the rights to in 2002 to “a now sixty-nine-year-old marathoner named Billy Blann, who lives in El Dorado, Arkansas. Blann owns Delta Press, which he bills as “The World’s Most Outrageous Catalog.” Book titles include *Build Your Own AR-15* and *The Militia Battle Manual*.”).

92. Marlow Stern, ‘*The Anarchist Cookbook*’ Author’s Last Confession: ‘It Fills Me with Remorse,’ DAILY BEAST, (Sept. 4, 2016), <https://www.thedailybeast.com/articles/2016/09/04/the-anarchist-cookbook-author-s-last-confession-it-fills-me-with-remorse> [<https://perma.cc/XD2M-TM8E>].

93. U.S. COPYRIGHT OFF., LIBR. OF CONG., RECORDATION OF TRANSFERS AND OTHER DOCUMENTS 2, <https://www.copyright.gov/circs/circ12.pdf> [<https://perma.cc/ZZVS-GTFG>].

94. Thompson, *supra* note 22.

95. WILLIAM POWELL, THE ANARCHIST COOKBOOK (Snowball Publishing 2013) <https://www.amazon.com/Anarchist-Cookbook-William-Powell/dp/1607966123> [<https://perma.cc/U9NW-HW9G>].

96. Thompson, *supra* note 22.

International version available.⁹⁷ The Internet Archive's Open Library describes Medina University Press as a publisher of 15 works between 1969 and 1982, primarily on the Middle East and Arab issues.⁹⁸ However, it does not list them as publishing *The Anarchist Cookbook*.⁹⁹ There also appears to be a 2003 reissued edition by Barricade Books available via Amazon, which would be an authorized edition because the copyright transfer happened after its publication.¹⁰⁰ In addition to the print version with alternative copyrights, online versions of the book also exist, including a full copy of the 1971 version that can be found on the Internet Archive.¹⁰¹

The public pronouncements by Powell and the copyright owners of *The Anarchist Cookbook* all point to the following claims: that Powell transferred his rights to the book when it was originally published by Lyle Stuart, Inc.; that Powell received no royalties from the book; and that despite his wishes for the book to be removed from print, the publishers continued to make the book available.¹⁰² In light of these claims, it is interesting that press coverage of *The Anarchist Cookbook* places the moral blame on Powell's decision as a 19-year-old to write the book, but the publishers who continue to make it available are not held morally responsible for its ongoing publication. Publishers can wrap their decision in First Amendment language and the importance of publishing controversial material. However, despite the First Amendment rhetoric, their profit-making intentions are fairly clear. For example, when asked if he would stop publishing the book because Powell wanted it out of print, Blann said that he sells thousands of copies each year and has no plans to stop selling it just because the author regrets writing it.¹⁰³

97. The Anarchist Cookbook (Medina University Press 2020) <https://www.barnesandnoble.com/w/anarchist-cookbook-william-f-powell/1002521149>. While the Amazon page lists Snowball as the publishing company, the "look inside" feature is to a Medina University copy of the book. See https://www.amazon.com/Anarchist-Cookbook-William-Powell/dp/1607966123/ref=sr_1_1?crid=1914OJ74B81MV&keywords=the+anarchist+cookbook+barricade+books&qid=1652903225&srefix=the+anarchist+cookbook+barricade+book%2Caps%2C189&sr=8-1

98. Medina Univ. Press Int'l, OPEN LIBRARY, https://openlibrary.org/publishers/Medina_University_Press_International [<https://perma.cc/AK7T-KTSE>].

99. *Id.*

100. WILLIAM POWELL, THE ANARCHIST COOKBOOK (Barricade Books 2003) <https://www.amazon.com/Anarchist-Cookbook-Reissue-published-Barricade/dp/B00EKYOLG6>.

101. vasoula2908, *Anarchist Cookbook by WP* (uploaded Sept. 25, 2017), <https://archive.org/details/AnarchistCookbookByWP/page/n11/mode/2up> [<https://perma.cc/D6KX-BQ7U>].

102. See *supra* Part III

103. Thompson, *supra* note 22.

Whatever Powell's moral culpability for the words he wrote in 1971 might be, it seems clear that, from as early as 1989, when he waived all future royalties, if not before, he distanced himself from the book.¹⁰⁴ If there is someone to blame for the ongoing link between *The Anarchist Cookbook* and the violence it inspires, it should be assigned to the publishers who continue to allow it to stay in print against the wishes of its author. That being said, if Powell's heirs were to pursue his wishes to remove the book from print, What rights would they have to do so?

IV. COPYRIGHT, TERMINATION, AND *THE ANARCHIST COOKBOOK*

As is becoming increasingly clear, there is nothing simple about *The Anarchist Cookbook*. Like all other books published before the 1976 Copyright Act but currently still under copyright, the rules of the game changed, and so too did the length of copyright and the relationship between the author and publisher. This section describes the state of copyright that existed when *The Anarchist Cookbook* was initially published and the changes to the law that impacted Powell's rights as the author and thus the rights of his heirs regarding ultimate control over the book. First, a brief overview of the term of copyright and extensions of that term in the context of the book. Second, the issue of termination rights Powell's heirs might have if they would choose to revoke the rights for the book to be in print.

A. *The Length of Copyright in The Anarchist Cookbook*

The Anarchist Cookbook was first published, and the copyright registration was filed, in 1971.¹⁰⁵ Books published in 1971 fall under the 1909 Copyright Act, which granted authors a twenty-eight-year copyright term with the option of renewing the term for an additional twenty-eight years.¹⁰⁶ Despite the seemingly author-friendly balance in the 1909 Act,

104. See *supra* Part III

105. See *supra* (photos above).

106. This two-term renewal structure was developed so that authors, like Powell, could renegotiate their rights after knowing if their creation was successful and, if successful, put them in a better bargaining position with the publisher. Thus, in the 1909 Act, the right to renewal goes back to the author. See Patrick Murray, *Heroes-for-Hire: The Kryptonite to Termination Rights Under the Copyright Act of 1976*, 23 SETON HALL J. SPORTS & ENT. L. 419 (2013) (citing Congressional debates that state, "It not infrequently happens that the author sells his copyright outright to a publisher for a comparatively small sum. If the work proves to be a great success and lives beyond the term of twenty-eight years, . . . it should be the exclusive right of the author to take the renewal term, and the law should be framed . . . so that [the author] could not be deprived of that right."). While the original contract for *The Anarchist Cookbook* is unavailable, it is likely that it contained a clause granting Lyle Stuart exclusive rights to publish the book for the entirety of its copyright, including the renewal

that grants two possible terms to the author, the Supreme Court decided the second term could be assigned to a publisher—along with the first term—in the initial contract, meaning rights rarely reverted back to the author after the initial term and could be contractually signed over to the publisher during the first term.¹⁰⁷ In 1976 Congress revised the 1909 Act, only a few years after Powell published *The Anarchist Cookbook*.¹⁰⁸ The revisions changed the length of copyright protection from twenty-eight years plus another twenty-eight-year renewal to the author's life plus fifty years.¹⁰⁹ This substantive change meant that works published before the 1976 Act were now treated differently than those published after.¹¹⁰ In response, Congress included an additional nineteen years of copyright protection for works published before January 1, 1978, when the 1976 Act went into effect.¹¹¹ Under the new formulation, *The Cookbook* would not enter the public domain until 2046.

Congress was not done with the extension of rights. In 1998, Congress passed the Sonny Bono Copyright Term Extension Act, which added twenty years to existing copyrights and changed the term to the author's life plus seventy years.¹¹² For works published before 1978, the

period. Thus, the original grant of rights would have been for fifty-six years—two twenty-eight-year terms. The book would have come up for renewal in 1999, but under the contract, rights would have remained with the publisher for the additional twenty-eight-year period. There is no indication that the copyright was renewed via the U.S. Copyright Office, possibly because copyrights are automatically renewed under the 1976 Act. Under the 1909 Copyright Act, Powell would have had no recourse to remove the book from print at the point of renewal, and it would have entered the public domain in 2027. The story would be simple if Congress had not changed the law, making ownership of those works published prior to the change but still in copyright during the change more difficult to trace.

107. Fred Fisher Music Co. v. M. Witmark & Sons, 318 U.S. 643, 643 (1943); Lionel Bently & Jane Ginsburg, "The Sole Right . . . Shall Return to the Authors": *Anglo-American Authors' Reversion Rights from the Statute of Anne to Contemporary U.S. Copyright*, 25 BERKELEY TECH. L. J. 1475, 1562–63 (2010). (describing the logic of the court as unsympathetic to authors who may have contracted away their renewal rights).

108. U.S. Copyright Office, <https://www.copyright.gov/title17/>.

109. American Association of Research Libraries, Copyright Timeline: A History of Copyright in the United States. <https://www.arl.org/copyright-timeline/>

110. U.S. Copyright Office, <https://www.copyright.gov/title17/>. 17 U.S.C. §302 (Duration of Copyright: Works created on or after January 1978).

111. Murray, *supra* note 106 at 421. After the passage of the 1976 Copyright Act, the copyright for *The Anarchist Cookbook* was extended for an additional nineteen years. Given the original contract assigned the copyright to the publisher, this meant that the publisher (or whomever owned the rights) was given an additional nineteen years of control, forty-seven years from when the first copyright term would have expired.

112. Sonny Bono Copyright Term Extension Act, Pub. L. No. 105-298, Stat. 112 Stat. 2827 (1998).

full term of protection was now ninety-five years.¹¹³ Again, *The Anarchist Cookbook*'s copyright was extended and was now set to expire in 2066. With no other possible interventions, Powell's heirs would be required to allow for the ongoing and continued publication of the book until 2066 and be cognizant that once it entered the public domain, they would have no authority to have it removed from publication at all.¹¹⁴

In 1992, Congress passed the Copyright Renewal Act, which automatically renewed copyright for works published between 1968 and 1977.¹¹⁵ Under this Act, renewal rights vest in the owner of those rights at the time of renewal.¹¹⁶ Copyright Circular 15A sets out the scope of automatic renewal for works published between January 1, 1964, and December 31, 1977.¹¹⁷ Thus, *The Anarchist Cookbook* was automatically renewed in 1999 for 67 years.¹¹⁸

However, it may be the case that absent a specific grant of copyright in writing to the renewal term, the rights to *The Anarchist Cookbook* reverted to Powell in 1999.¹¹⁹ As Stolper has noted:

Although this amendment eliminated the registration of renewal requirement as a condition for copyright protection, it did not merge the initial term with the renewal and extension terms. Accordingly, an effective assignment of the renewal interest made during the initial term required that the author at least survive the filing date of the renewal registration.¹²⁰

Powell was alive when the renewal term came but had waived his rights to royalties a decade earlier. Without access to the original contract, it is

113. Sean Stolper, *Termination Rights: An In-Depth Look at Looming Issues under the Copyright Act of 1976*, 13 TEX. REV. ENT. & SPORTS L. 33, 37 (2011).

114. Once a book enters the public domain then the author or the author's heirs no longer control the rights protected by copyright. Stanford Libraries, "Welcome to the Public Domain," <https://fairuse.stanford.edu/overview/public-domain/welcome/>.

115. Stolper, *supra* note 113 at 37. Much of this discussion would be moot if the copyright in *The Anarchist Cookbook* had not been renewed twenty-eight years after publication in 1999. Under the 1909 law, renewal was not automatic and failure to renew meant that the copyright ended and the work fell into the public domain.

116. THOMAS D. SELZ, MELVIN SIMENSKY, PATRICIA ACTON & ROBERT LIND, 3 ENTERTAINMENT LAW 3D: LEGAL CONCEPTS AND BUSINESS PRACTICES § 16:137 (2021).

117. U.S. COPYRIGHT OFFICE, LIBRARY OF CONG. DURATION OF COPYRIGHT 2 <https://www.copyright.gov/circs/circ15a.pdf> [<https://perma.cc/8Y3Z-DCG2>].

118. *See generally*: U.S. COPYRIGHT OFFICE, LIBRARY OF CONG. DURATION OF COPYRIGHT 2 <https://www.copyright.gov/circs/circ15a.pdf> [<https://perma.cc/8Y3Z-DCG2>].

119. *Hawkins v. Jones*, 74 F. App'x 391, 394 (2003) (stating "Ownership of a copyright can only be transferred by a writing signed by the copyright owner. *See* 17 U.S.C. § 204. Absent language expressly granting renewal rights, an agreement does not grant renewal rights even if it does transfer ownership during the original term. *See* 17 U.S.C. § 304(a)(1)(C).").

120. Stolper, *supra* note 113, at 37.

difficult to know where the rights resided after renewal. The most likely answer is that they remained with Stuart.

Extending copyright was not the 1976 Act's only effect. The 1976 Act also gives authors the right to remove themselves from earlier contracts, and this is where Powell's heirs may have a claim.¹²¹ This is an admittedly confusing area of law, as noted by Weiman, DeFrancis, and Kronstadt: "Not since anyone studied the Rule against Perpetuities in law school has there been so much confusion over the operation of what might seem to be a nearly impenetrable set of rules, subrules, exceptions, and complicated timing issues."¹²² The next section will seek to describe this impenetrable set of termination rights afforded to authors.

B. Termination Rights and The Anarchist Cookbook

Congress recognized that sometimes the author of a work will not be in a position to adequately negotiate with a publisher at the initial contract phase because the popularity of the work—or the author—is yet to be determined.¹²³ To rectify this unfairness in bargaining positions and respond to the logic that an increase in the length of the term of copyright created a new estate through the addition of more time, Congress included termination rights in the 1976 Act.¹²⁴ Sections 203 and 304(c) of the 1976 Act include a "non-waivable" right of authors to their works.¹²⁵ This means that even if an author signed a contract waiving all rights to the copyrighted work, the statute opens an inalienable window to renegotiate those rights.¹²⁶

While § 203 deals with works published after the 1976 Act came into effect, § 304(c) deals retroactively with works published before January 1, 1978.¹²⁷ Section 304(c)(5) states, "termination of the grant may be effected *notwithstanding any agreement to the contrary*, including an

121. Edward E. Weiman, Andrew W. DeFrancis & Kenneth D. Kronstadt, *Copyright Termination for Noncopyright Majors: An Overview of Termination Rights and Procedures*, 24 INTELL. PROP. & TECH. L. J. 3, 4 (2012).

122. *Id.*

123. William F. Patry, *The Copyright Term Extension Act of 1995: Or How Publishers Managed to Steal the Bread from Authors*, 14 CARDOZO ARTS & ENT. L.J. 661–694, 670–71 (1996); Lydia Pallas Loren, *Renegotiating the Copyright Deal in the Shadow of the 'Inalienable' Right to Terminate*, 62 FLA L. REV. 1329, 1346 (2010) (describing the 1909's intent of balancing author's and publisher's rights at the point of copyright renewal).

124. Loren, *supra* note 123, at 1333–34.

125. 17 U.S.C. §§ 203, 304(c)(5); Stolper, *supra* note 113, at 34 (describing termination rights as inalienable).

126. Loren, *supra* note 123, at 1331.

127. 17 U.S.C. § 304(c).

agreement to make a will or to make any future grant.” Thus, under the language of the 1976 Act, the author or the author’s heirs may terminate rights granted to a publisher even if there was a contract assigning those rights away. The termination window for works created before the passage of the 1976 Act begins fifty-six years from the date of the original grant and lasts “for a period of five years beginning at the end of fifty-six years from the date copyright was originally secured, or beginning on January 1, 1978, whichever is later.”¹²⁸ For *The Anarchist Cookbook*, a window opens for Powell’s heirs in 2027, meaning his wife and sons can terminate the rights Powell granted to Stuart over half a century earlier.¹²⁹

Successful use of the termination clause requires following particular procedures. These include notification of the termination “not less than two or more than ten years before that [effective date of termination] date.”¹³⁰ For example, to terminate rights in 2027, one must provide notification between 2017 and 2025, meaning the window for termination is now open for *The Anarchist Cookbook*. The termination process also requires that “advance notice in writing upon the grantee or the grantee’s successor in title” be given.¹³¹ As such, Blann or his heirs must be notified of the termination because Blann is the current owner of the rights. Finally, the notice must comply with the procedures developed by the Copyright Office, which can be found on its website.¹³²

If termination is not accomplished during the fifty-six-year window, the Sonny Bono Copyright Term Extension Act provides a second opportunity for authors to reclaim their copyright at the seventy-five-year mark, thus recovering the last twenty years of their copyright—the years that the copyright otherwise would have already fallen into the public domain.¹³³ For *The Anarchist Cookbook*, that seventy-year window occurs in 2046, with the copyright finally expiring twenty years later in 2066.

Terminating the publisher’s rights to *The Anarchist Cookbook* would allow Powell’s heirs to gain control over the book’s publication or remove it from print entirely according to Powell’s publicly expressed wishes. However, most of Powell’s heirs, his wife and two sons, would need to agree to the termination.¹³⁴ Of course, pursuing the removal of *The*

128. 17 U.S.C. § 304(c)(3).

129. *See generally id.*

130. 17 U.S.C. § 304(c)(4)(A).

131. 17 U.S.C. § 304(c)(4).

132. 17 U.S.C. § 304(c)(4)(B); 37 C.F.R. § 201.10 (2021).

133. Weiman et al., *supra* note 121, at 4–5.

134. Loren, *supra* note 123 at 1348 (such rights begin with the spouse and children and pass per stirpes to grandchildren).

Anarchist Cookbook is easier said than done, and it may simply not be worth the time and effort to do so.

C. The Possibility of Success at Terminating Rights to The Anarchist Cookbook

Given that the Congressional intent in providing termination rights was to give an author the opportunity to renegotiate a contract because of a work's commercial success, as will be discussed below, the existing caselaw deals with authors or authors' heirs trying to ensure a better licensing agreement over a popular work. In contrast, to achieve Powell's wishes, his heirs's revocation would attempt to pull *The Anarchist Cookbook* from publication, at least for the duration of its copyright. Thus, the caselaw does not provide much in the way of parallel cases. So, what are the chances of terminating copyright in *The Anarchist Cookbook* in light of the existing caselaw?

First, to successfully terminate rights granted to another entity, the termination procedures described in the statute and by the U.S. Copyright Office must be followed to the letter, or it is likely the termination effort will be invalid. However, the notice requirements are not author friendly.¹³⁵ In *Burroughs v. Metro-Goldwyn-Mayer, Inc.*, the heirs to Edgar Rice Burroughs's Tarzan character did not provide specific enough listings of all the works where Tarzan appeared. Thus, the court held the termination invalid against the other works, leaving open the possibility that one other than Burroughs's heirs could use the Tarzan character.¹³⁶ Given that there is a single work at issue here, it is unlikely that terminating the assignment of copyright in *The Anarchist Cookbook* will fail because of the work's inadequate description in the termination notice. However, the larger point is that the court requires termination notices to be completed and exactly follow the procedures.

A second issue emerging in the caselaw over termination rights deals with the possible conflict between the contract's language and the statutory language regarding termination. If the contract includes specific language that assigns the copyright in perpetuity, then some courts have said that the contract cannot be terminated, even if the Copyright Act provides otherwise.¹³⁷ However, if the contract doesn't specify a duration

135. Bently & Ginsburg, *supra* note 107, at 1573–74 (describing the difficulties the author of *Superman* encountered attempted to terminate rights granted to Warner Brothers).

136. *Id.*; Weiman et al., *supra* note 121, at 5.

137. Weiman et al., *supra* note 121, at 8 (noting that, “The Southern District agreed with the holdings in *Walthal*, *Automation by Design*, and *Korman*, that state law did not conflict with federal copyright law. The court, however, concluded that because ‘New York law provides that a contract

period, termination may be possible.¹³⁸ The caselaw on this point suggests that courts struggle to balance copyright law's intent to ignore contractual language during the termination phase and the equally strong legal desire to preserve valid contracts. For *The Anarchist Cookbook*, it is difficult to know exactly what language was included without access to the original contract. It is likely, as discussed earlier, that the contract covered the renewal term that would have been part of copyright law in 1971. Based upon the language included in the transfer of rights I have access to, specifically the letter assigning all royalties and future earnings to Stuart in perpetuity, it is likely that language related to the perpetual nature of the copyright grant was included in the original contract as well. Ultimately, depending on the language of the original grant of rights to Powell and the circuit where the case is litigated (something not covered in this paper), litigating the termination rights could be triggered by any perpetual grant in the statute.

Third, even if the rights to *The Anarchist Cookbook* are terminated, derivative works, meaning those works that have evolved from the original book or even possibly an edited version of the book, will remain in circulation. The question then becomes, Are any of the many versions authorized derivative works? The original *Cookbook* was published in 1971.¹³⁹ There is a heavily edited version of *The Anarchist Cookbook*, according to reviewers on Amazon, making it a potential derivative work.¹⁴⁰ There is also the 2013 version by Snowball Publishing, which, as discussed above, is unauthorized and so would not constitute a derivative work.¹⁴¹ Ozark Press, LLC, the current copyright holder, has published *The Anarchist Cookbook*, but these are presented as reprints, not new and edited versions.¹⁴² The movie inspired by the book, also titled *The Anarchist Cookbook*, may be considered a derivative work, but it isn't clear if it ever gained permission from the copyright owner to use the title or if such permission was necessary.¹⁴³

is terminable at will only if . . . there is no express agreement that the duration is perpetual' and the license agreement at issue was 'in perpetuity,' the plaintiff had no right to terminate her contract in the first place.").

138. *Id.* at 8-9

139. POWELL, *supra* note 17.

140. The one-star reviews all point to the cheaply made copy they received rather than an original. See: https://www.amazon.com/Anarchist-Cookbook-William-Powell/dp/1607966123/ref=sr_1_1?crid=2SS3LUYM5HV5L&keywords=The+anarchist+cookbook+1978&qid=1652921074&sprefix=the+anarchist+cookbook+1978%2Caps%2C178&sr=8-1

141. Thompson, *supra* note 22.

142. *Id.*

143. THE ANARCHIST COOKBOOK (Screen Media 2002).

Fourth and most significantly, the courts have determined that an author or their heirs can supersede the right to terminate if either creates an agreement post-1978.¹⁴⁴ In *Milne v. Slesinger*, A.A. Milne's heirs renegotiated the rights to the Winnie the Pooh characters in 1983 after the passage of the 1976 Act.¹⁴⁵ When Milne's granddaughter sought to terminate the assignment of rights, the court held that the renegotiation after the passage of the 1976 Act meant there were no longer termination rights in play because Milne's heirs had specifically included language in the 1983 agreement that terminated the original 1930 agreement and established a new contract.¹⁴⁶ As Stolper notes,

This outcome hinged on three primary factors: first, the ambiguity plaguing the statutory language regarding “agreements to the contrary;” second, the court's belief that the underlying policy considerations for statutory termination were met by the heirs' ability to negotiate more advantageous terms based on the value of the work; and, third, that the 1983 agreement terminated the previous grants, thus leaving no pre-1978 grant to terminate under § 304(d).¹⁴⁷

The Second Circuit has also taken up the question of a post-1978 contract in the context of termination rights.¹⁴⁸ In *Penguin v. Steinbeck*, John Steinbeck's wife had renegotiated the licensing agreements for Steinbeck's works in 1994 and included language that specifically extinguished the earlier (and original) 1938 agreement.¹⁴⁹ The court inquired into the question of if an agreement that came into existence after the passage of the Copyright Act of 1976 was an “agreement to the contrary” under the statutory language of § 304. The court concluded that because the renegotiated contract took place after the change in the Copyright Act, the heirs were well aware of changes in the statute. As a result, an agreement explicitly terminating the pre-1978 contract could no longer be “an agreement to the contrary” under § 304.¹⁵⁰ Citing to the Ninth Circuit in *Milne*, the Second Circuit held that post-1978 renegotiations allow for contracts to be created with the full understanding of the value of the work.¹⁵¹

144. Stolper, *supra* note 113, at 46 (*Milne v. Slesinger* held that a post-1978 agreement superseding a pre-1978 grant extinguishes the right to terminate the original grant.).

145. *Milne ex rel. Coyne v. Stephen Slesinger, Inc.*, 430 F.3d 1036, 1037–38 (9th Cir. 2005).

146. *Id.* at 1042–43.

147. Stolper, *supra* note 113, at 47.

148. *Penguin Group (USA) Inc. v. Steinbeck*, 537 F.3d 193, 200 (2d Cir. 2008).

149. *Id.*

150. *Id.* at 202.

151. *Id.* at 203.

In 2016, the Sixth Circuit took up the issue of termination rights in *Brumley v. Brumley* and held that for a post-1978 contract to validly eliminate termination rights, the contract must specifically mention these rights.¹⁵² In *Brumley*, unlike *Milne*, there had been no post-1978 contract changing the nature of the termination rights.¹⁵³ As the court notes:

The key difference between *Milne* and *DC Comics* on the one hand and today's case on the other is that the pre-1978 assignments in those cases were clearly revoked by the post-1978 assignments. Because the earlier contracts no longer existed, they could not be terminated. That is a far cry from our case, in which the 1975 contract remained alive and well—and subject to termination—at the time of termination.¹⁵⁴

The question relevant to the termination of the copyright agreement for *The Anarchist Cookbook* is whether the agreement between Powell and Stuart in 1989, wherein Powell waived royalties, could be deemed evidence that the author had waived his termination rights. The signed letter doesn't include reasons for Powell's waiving of royalties, and there is nothing in the agreement indicating that it intended to alter the 1971 contract.¹⁵⁵ Unlike *Milne* and *Steinbeck*, where there were post-1978 contracts that explicitly revoked the pre-1978 agreements, no such agreement was made by Powell.¹⁵⁶ If litigated, a court would most likely distinguish Powell's agreement from those discussed in the existing caselaw. Powell waived royalties but was under the (inaccurate) belief that there was nothing he could do to change the contract and recover his original rights to the book.¹⁵⁷ Thus, the termination rights still attach to the 1971 agreement under § 304 and can be used by Powell's heirs to reclaim control over *The Anarchist Cookbook*.

With enough time and money, it may be possible to secure the termination rights and then systematically seek out and stop as many of the digital versions and pirated printed copies as possible. Taking on a cultural icon like *The Anarchist Cookbook* and attempting to remove it from circulation will be a monumental task. Even large corporations have difficulty controlling circulation of their copyrighted works. For example, without the power of a Disney corporation, that uses its "vault" to restrict and control circulation of its titles, including those it wishes to no longer

152. *Brumley v. Brumley*, 822 F.3d 926, 931–32 (6th Cir. 2016).

153. *Id.*

154. *Id.* at 932.

155. Contract between William Powell and Lyle Stuart, Lyle Stuart, Inc. CEO (Feb. 17, 1989) (on file with author) (on file with the Lyle Stuart Archive at Columbia University).

156. *Id.*

157. Powell, *supra* note 17 (discussing how he does not own the copyright).

make available like *Song of the South*, it would be difficult to control circulation of a book now firmly in the hands of readers, collectors, and booksellers.¹⁵⁸ Even if termination rights were successfully granted, yet another lesson we learn from tracing the copyright history of *The Anarchist Cookbook* is just how little copyright matters without the resources of a major corporation with a large legal team behind it to fight such battles.

V. CONTROVERSIAL BOOKS AND COPYRIGHT CENSORSHIP

Termination rights are the most likely path for Powell's heirs if they wish to control the copyright and preclude future authorized publication of the book for the remainder of the copyright term. Given its prominence in American culture, there are other issues raised by the current publication of *The Anarchist Cookbook* that should be evaluated. This section takes a step back and considers other dimensions of the decision to remove a book—any book—from circulation. U.S. law provides limited insights into how an author can withdraw a published text from circulation, but this section will explore some of these political and legal implications surrounding efforts to do so.

The Anarchist Cookbook may be one of the more controversial books in publication in the United States, but it is not the only one. As Goldman and Silbey have noted, copyright may not have been designed to suppress controversial works, but it has been weaponized to do so to preserve privacy or reputation.¹⁵⁹ While Europe has a “right to be forgotten,” that can be used by an individual to remove content from the Internet, U.S. law does not extend such a right to authors.¹⁶⁰ Recent examples demonstrate why controlling the rights to a book can help limit the circulation of these texts.

Dr. Seuss Enterprises (DSE), for example, is the private company that controls the rights to all Dr. Seuss books. DSE decided to withdraw from future publication six books containing controversial images drawn by Dr. Seuss that have not aged well. Such an activity was possible

158. Kayleigh Donaldson, *How Disney Tried and Failed to Remove Song of the South from History*, SYFY (Oct. 11, 2020, 11:03 AM), <https://www.syfy.com/syfy-wire/how-disney-tried-and-failed-to-remove-song-of-the-south-from-history> [<https://perma.cc/VQL5-9FX9>] (Even Disney cannot entirely control circulation and according to Donaldson continues to market aspects of *Song of the South* while trying to erase its complicated racist history).

159. Eric Goldman & Jessica Silbey, *Copyright's Memory Hole*, 2019 BYU L. REV. 929, 929 (2020).

160. *Id.* at 940.

because DSE controlled the rights to these books.¹⁶¹ Such an act—deciding whether to publish a work—is well within the rights of a copyright owner. However, the decision sparked controversy because some commentators claimed that removing the books from circulation was the work of “cancel culture.”¹⁶² For some copyright scholars, the purpose of copyright and the public domain is to preserve creative work so that it will be available for others, not so that it can be removed from circulation.¹⁶³

Lemley argues that a work should remain available absent a compelling reason for withdrawing it, and copyright’s fair use doctrine ought to allow for ongoing and continued access to the work.¹⁶⁴ Such a position embraces a vibrant public domain and allows for the fullest marketplace of ideas to be created. Lemley makes an exception for dangerous works, yet he argues that while an author should be able to disavow the work, “they shouldn’t have the power to stop others from keeping access to the work alive, particularly if doing so allows the world to see what the copyright owner once believed.”¹⁶⁵ It would seem that preserving an author’s historical belief is prioritized over their express desire to remove the book in his view.

In most cases, accessing copyrighted works that have fallen out of circulation is a matter of finding a path for orphan works to be made available despite the inability to identify the copyright owner or because the distributor of a work has ceased distribution.¹⁶⁶ In such cases, Lemley argues that “If the distributor stops distributing, others should be free to step in and keep the work available. Notably, that includes the copyright owner herself, who under my proposal may effectively take back a work

161. Aaron Moss, *Is it Fair Use to Reproduce Out-of-Print Seuss?*, COPYRIGHT LATELY (March 5, 2021), <https://copyrightlately.com/fair-use-to-reproduce-out-of-print-seuss/> [<https://perma.cc/DFJ4-9B9E>] (The books withdrawn were: “And to Think That I Saw It on Mulberry Street,” “If I Ran the Zoo,” “McElligot’s Pool,” “The Cat’s Quizzer,” “Scrambled Eggs Super!” and “On Beyond Zebra!”).

162. Edward Helmore, “*It’s a moral decision: Dr Seuss Books Are Being “Recalled” Not Cancelled, Expert Says*,” THE GUARDIAN (March 7, 2021), <https://www.theguardian.com/books/2021/mar/07/dr-seuss-books-product-recall-cancel-culture> [<https://perma.cc/DB4P-G3S6>].

163. Mark A. Lemley, *Disappearing Content*, 101 B.U. L. REV. 1255–1288, 1269 (2021).

164. *Id.* at 1270 (arguing that, “But if a copyright owner decides to let their work go out of print or otherwise become unavailable (or if the copyright owner itself goes out of business or can’t be found), the public’s interest in having access to published content is implicated. Copyright’s fair use doctrine should allow a third party to make those out-of-print works available unless there are compelling public reasons to deny access.”).

165. *Id.* at 1277–78.

166. Center for the Study of the Public Domain, Orphan Works, <https://web.law.duke.edu/cspd/orphanworks/> (describing the problems of orphan works for 20th century culture).

she has licensed if the licensee is no longer distributing it.”¹⁶⁷ For *The Anarchist Cookbook* the issue is different—it is the author that wants to remove the book from circulation. Absent the termination process discussed above, and given the infamous nature of the book, it is unlikely that it will fall out of circulation or become unavailable without active intervention.

Scholar Brian Frye suggests that in such cases, there ought to be a “right to reattribution,” the idea that individual authors who wish to disassociate from a work that no longer reflects their beliefs might reattribute it to a different author and thus preserve the overarching value of a free marketplace of ideas.¹⁶⁸ Frye suggests that because attribution is an alienable right, it could be integrated into copyright law so that authors can remove their names, attribute the text to a different source, and keep the work in circulation while hopefully allowing themselves to remove the spotlight from their authorship.¹⁶⁹ In this case, should such a right be created, others would likely step in to take responsibility for the work. After all, Powell waived royalties from the book decades ago and has actively sought to disassociate himself from it for years, and yet it remains popular and in print. It is easy to consider a request by Powell’s heirs to remove his name from the title page of current publications of *The Anarchist Cookbook*. Even without codifying a right to reattribution into the Copyright Act, the publisher could agree to publish future versions without Powell’s name.

The specter of censorship is associated with efforts by copyright owners to remove books from circulation, and Lemley and Frye’s arguments help clarify the larger public interest in keeping such works in print or the public domain. However, there are examples of individuals using copyright to halt the circulation of works they wished to see out of the public view, where the appropriation of a copyrighted work has led to uses condemned by the authors. For example, Lenny Pozner, the father of Noah Pozner, one of the children killed in the Sandy Hook massacre, has used copyright to get his son’s photo removed from conspiracy theory websites.¹⁷⁰ The copyright owner of Pepe the Frog, Matt Furie, has used copyright in an effort to reclaim the frog from alt-right trolls and white

167. Lemley, *supra* note 163 at 1281.

168. Brian L. Frye, *The Right of Reattribution*, 5 BUS. ENTREPRENEURSHIP & TAX L. REV. 22, 23 (2021).

169. *Id.* at 30.

170. Reeves Wiedeman, *Lenny Pozner Believed in Conspiracy Theories. Until His Son’s Death Became One*, N.Y. MAG.: INTELLIGENCER, <https://nymag.com/intelligencer/2016/09/the-sandy-hook-hoax.html> (last visited Aug 7, 2021).

supremacists who appropriated the frog as a symbol of their beliefs.¹⁷¹ Pepe became a popular meme for white supremacists that Furie sought to preclude. However, both the efforts of Furie and Pozner highlight how difficult it is to halt infringing activity in the Internet age because images circulate ubiquitously and any legal efforts rely heavily on extensive pro bono legal work or individual dedication to a cause.

Without Frye's reattribution and in the face of a strong American commitment to the marketplace of ideas, the question remains how best to understand the ongoing publication of a book advocating violence and providing a roadmap for committing such violence. These are not new questions, and as a general rule, efforts to block publication, even for reasons associated with the dangerousness of the ideas, have failed.¹⁷² Yet *The Anarchist Cookbook* is not just a book about violence, but it has taken up a critical place in American culture. To let this book disappear is also to erase the political actions and reactions surrounding the United States's engagement in Vietnam and the corresponding social protest and upheaval. Balancing an author's right to be forgotten with society's need to remember history is not an easy or bright line to draw.

VI. CONCLUSION

While not an example of actual anarchist thinking, *The Anarchist Cookbook* has taken on almost mythological status in some circles, making it all the more difficult to honor Powell's stated wishes that the book fade away and that its copyright owner stop printing it. Even if it became possible to acquire the rights and cease publication of future copies, existing physical and digital copies will remain available. Additionally, it is likely that if it became known that future copies would

171. Matthew Gault, *The Great Meme War II: Amid Lawsuit Threats, the Alt-Right Says Pepe Belongs to Them*, VICE: MOTHERBOARD (Sept. 19, 2017, 12:39 PM), https://motherboard.vice.com/en_us/article/a3kvmk/the-great-meme-war-ii-amid-lawsuit-threats-the-alt-right-says-pepe-belongs-to-them [https://perma.cc/K94N-635B]; Matthew Gault, *Here Are the Letters That Pepe the Frog's Lawyers Sent to the Alt Right*, VICE: MOTHERBOARD (Sept. 18, 2017, 5:35 PM), https://motherboard.vice.com/en_us/article/ne7nzz/here-are-the-letters-that-pepe-the-frogs-lawyers-sent-to-the-alt-right [https://perma.cc/B3GH-42MJ]; Matthew Gault, *This Is the First Copyright Infringement Lawsuit Filed Against a Pepe Meme Maker*, VICE: MOTHERBOARD (Oct. 5, 2017, 3:45 PM), https://motherboard.vice.com/en_us/article/xwgpqk/pepe-copyright-lawsuit-matt-furie-jessica-logsdon [https://perma.cc/62N3-G5B7].

172. Bill Lueders, *The H-Bomb Case Revisited*, PROGRESSIVE MAG. (Aug. 1, 2019, 12:00 AM), <https://progressive.org/api/content/5dfc6c76-aef6-11e9-a123-12f1225286c6/> [https://perma.cc/VBP3-6G2R] (Recounting *The Progressive's* victory after the U.S. Federal Government sued for publishing how to build a nuclear bomb. While initially blocked from publication on national security grounds, once it was demonstrated that the information was already available, the magazine won its case.).

no longer be printed, the market for existing copies would grow, as happened to the books that Dr. Seuss Enterprises withdrew from circulation.¹⁷³

Another question to evaluate when assessing the viability of allowing *The Cookbook* to fade away is how best to address the numerous copycat versions and books now sharing a title with the original. Blann, the current copyright owner, seems not to control the unauthorized print and digital versions of the book that are readily available.¹⁷⁴ Thus, while obtaining the rights to the book would be a necessary step to withdraw it from circulation, these rights will not be sufficient to eliminate the book so that it could fade away.

There are, after all as discussed earlier, numerous unauthorized versions and derivative works that would need to be tracked down and eliminated. It is likely that Yogi Shan's 2015 *The Corrected and Updated Anarchist Cookbook* is an unauthorized derivative work and so could potentially be removed from publication with appropriate legal action.¹⁷⁵ However, *The Anarchist Cookbook* has inspired various other works that copyright may still protect. Thus, removing *The Anarchist Cookbook* written by Keith McHenry and Chaz Bufe of the Food Not Bombs Collective is unlikely because, as a commentary on the original, it likely does not infringe, even though it shares the same title.¹⁷⁶ There is also the CrimethInc. Workers Collective's 2012 *Recipes for Disaster: An Anarchist Cookbook* that, like the original, is not an actual cookbook but instead a compilation of direct action, but in this case, actually written by anarchists.¹⁷⁷ Then there is *The Anarchist Kosher Cookbook*, billed as Jewish Humor/Horror that, in my view, takes the win for weirdest work sharing a title with the original.¹⁷⁸ While providing the "recipe" for making a golem, the book otherwise shares little with the original but demonstrates the original's cultural power.¹⁷⁹

All things considered, while it is possible to halt *The Anarchist Cookbook*'s authorized publication, the work will still be available given its ubiquity. Even if, after what would become years of litigation, Powell's heirs successfully stamped out all memories of the official book and

173. Moss, *supra* note 161 (noting that "a number of opportunistic sellers are attempting to cash on DSE's decision to stop publishing the books at issue by jacking up the prices to many multiples of what they were selling for prior to DSE's announcement.").

174. Stem, *supra* note 92.

175. YOGI SHAN, *THE CORRECTED AND UPDATED ANARCHIST COOKBOOK* (2015).

176. MCHENRY ET AL., *supra* note 16.

177. CRIMETHINC, *supra* note 16.

178. MAXWELL BAUMAN, *THE ANARCHIST KOSHER COOKBOOK* (2017).

179. *Id.*

possible derivatives, the book will enter the public domain in 2066 and then can freely be republished, remixed, or edited by anyone. Used copies of the book in different versions are ubiquitous on the Internet and easy to acquire.

Powell tapped into a thread of popular culture and, in some cases, extremist views that copyright law cannot effectively address. *The Anarchist Cookbook*'s existence illustrates that once written and in circulation, the ideas we produce can take on a life of their own, and we may have little control over the consequences. First Amendment advocates like Stuart argue that no matter the consequences of the written word, we have an absolute right to print and read everything, and he spent his professional life “testing the boundaries of the [F]irst [A]mendment.”¹⁸⁰ Books like *The Anarchist Cookbook* test those boundaries. At least some legal scholars have suggested that there should be carve-outs in the First Amendment for such works and that we need to grapple with the intersection of terrorist speech and the First Amendment.¹⁸¹ Still, as Eugene Volokh points out, it is unlikely that suppressing these works is possible in our current Internet environment.¹⁸²

The Anarchist Cookbook will likely continue to play a role in domestic terrorism and to be a point of discussion for years to come. Its copyright journey helps to highlight the disparate power between authors and copyright owners, the complicated nature of knowing who owns a copyright and, even if they do, how that ultimately benefits them. It also has provided insight into the complicated legal world of copyright termination. Given how unlikely it is to be removed from print any time soon, the best recommendation is the one often touted by First Amendment advocates who resist censorship, whatever comfort it may offer us—the best way to address bad speech is with more speech.

180. Milliot, *supra* note 80.

181. See generally Susan Brenner, *Complicit Publication: When Should the Dissemination of Ideas and Data Be Criminalized?*, 13 *Alb. L.J. Sci. & Tech* 273 (2003); Laura K. Donohue, *Terrorist Speech and the Future of Free Expression*, 27 *Cardozo L. Rev.* 233 (2005).

182. Eugene Volokh, *Crime-Facilitating Speech*, 57 *Stan. L. Rev.* 1095, 1221 (2005).